

**MINUTES OF THE
MENDHAM BOROUGH BOARD OF ADJUSTMENT
September 7, 2011
Garabrant Center, 4 Wilson St., Mendham, NJ**

CALL TO ORDER

The regular meeting of the Board of Adjustment was called to order by Chair Seavey at 7:35 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

CHAIR'S ADEQUATE NOTICE STATEMENT

Notice of this meeting was published in the Observer Tribune and Daily Record on January 13, 2011 in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

ROLL CALL

Mr. Palestina – Present	Mr. Seavey – Present
Mr. Peck – Present	Mr. Smith - Present
Mr. Peralta- Present	Mr. McCarthy, Alt. I – Present
Mr. Ritger – Present	Mr. Germinario, Alt. II – Present
Mr. Schumacher - Present	

Also Present: Mr. Henry, Esq., Board Attorney
Ms. Cynthia Delane, Land Use Assistant

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APPROVAL OF MINUTES

Mr. Ritger made a motion to approve the minutes of the August 3, 2011 special meeting of the Board as written. Mr. Peralta seconded. All members being in favor, the minutes were approved.

Mr. Smith made a motion to approve the minutes of the August 3, 2011 executive session special meeting as written. Mr. Ritger seconded. All members being in favor, the minutes were approved.

PUBLIC COMMENT

Chair Seavey opened the meeting to public comment or questions on items that were not on the agenda. There being none, the public comment session was closed.

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Zenjon Enterprises, LLC – Preliminary and Final Site Plan/Variances/Interpretation
Block 1501, Lot 11, 25 East Main St. (Historic District): **Resolution**

Present: Robert Simon, Esq., Attorney for Applicant

Mr. Henry, Esq. had provided the Board with a draft copy of the resolution in their pre-meeting packages. After discussion with Mr. Simon, Esq. he revised the draft to include several editorial changes, clarifications and reference to the basement area of building one to contain a Fitness Room, Break Room with a kitchen area, and a Bathroom as shown in the Architectural Plans. A revised draft was provided to the Board at the meeting.

In Board discussion, and in reference to the requirement to mill and repave the parking lot should Phase II be delayed, Mr. Ritger questioned whether it would be a hardship for the applicant if he had to repave the driveway twice if Phase II was eventually started. Mr. Henry, Esq. explained that the solution reached was a compromise as the Board Engineer was of the opinion that it should be paved in Phase I, should Phase II never be completed. In implementation, should there

be a very small area that would most likely become an engineering field decision. He also confirmed for Mr. Peck that the striping of the lot would be required by ordinance.

In terms of the Fitness Room, Break Room with a kitchen area and a Bathroom in the basement of the first building, Mr. Henry, Esq. explained to the Board that in the ordinance, floor area is not considered below the first floor. What the applicant has proposed are amenities and services for the people in the building. The resolution limits the use and would not allow conversion to office space which would drive the need for additional parking.

Chair Seavey reinforced that the services are to be related to the offices above and not leased for fitness purposes. Mr. Simon, Esq. advised that leasing would require another variance. After a short discussion, Board and Mr. Simon, Esq. agreed that the space would be clarified as being used "by the business occupants of both buildings".

Mr. Ritger made a motion approve the resolution as amended with all proposed changes. Mr. Schumacher seconded.

ROLL CALL: The result of the roll call of eligible voters was 6 to 0 as follows:

In Favor: Peck, Peralta, Ritger, Schumacher, Smith, Seavey
 Opposed: None
 Abstentions: None

The motion carried. Following is the approved resolution:

**MENDHAM BOROUGH BOARD OF ADJUSTMENT
 RESOLUTION
 GRANTING PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL
 WITH VARIANCES AND DESIGN EXCEPTIONS FOR
 ZENJON ENTERPRISES, LLC
 BLOCK 1501, LOT 11**

WHEREAS, Zenjon Enterprises, LLC ("Applicant") has applied to the Board of Adjustment of the Borough of Mendham (the "Board") for "d" variance relief, together with Preliminary and Final Major Site Plan Approval with variances and design exceptions, with respect to construction and use of two separate office buildings on property located at 25 East Main Street and designated Block 1501, Lot 11 on the Tax Map of the Borough of Mendham (the "Subject Property"); and

WHEREAS, a public hearing was commenced on April 5, 2011, continued on May 3, 2011 and June 8, 2011, and concluded at a special meeting on August 3, 2011, during which hearing testimony was offered by and on behalf of Applicant, argument was advanced by Applicant's attorney, the Board reviewed the documents and materials filed by Applicant and exhibits presented in the course of the hearing, and members of the public and the Board's professionals were given an opportunity to comment on the Application; and

WHEREAS, the Board has considered Applicant's submissions for the requested site plan approval, variances and design exceptions, including testimony and exhibits presented by and on behalf of Applicant, the arguments advanced by Applicant's attorney, the comments of the Board's consultants, and comments from members of the public;

NOW, THEREFORE BE IT RESOLVED that, based upon the foregoing, the Board makes the following findings of fact and conclusions of law:

1. Applicant is the owner of property located at 25 East Main Street (Tax Map Block 1501, Lot 11) in the Borough of Mendham.
2. The Subject Property, located in the Historic Business District, has been owned by Applicant since September 8, 2010, having acquired same from PNC Bank (which held a site plan approval for renovation of, and addition to, an existing structure for use as a bank).
3. Prior to the PNC Bank application, the Subject Property and the structure thereon had been vacant and out of use for a number of years. After the site plan approval for reworking the property into a bank (also several years ago) the structure and property remained vacant. It deteriorated from a dilapidated state to a failing building, leaking and producing structural water damage and mold.
4. The central portion of the structure existing on the Subject Property is an historic cottage from the mid-19th century, to which additions had been made over time in various (and not necessarily complementary) styles. Although Applicant initially explored renovation of the historic building, testimony from his architect and engineer made it clear that the building was beyond practical reclamation, and that even if that had been possible, it would be difficult to utilize the structure in its interior layout for the kind of office purpose to which Applicant meant to put the property. As a result, Applicant's initial proposal involved the phased construction of

two buildings on the Subject Property. Phase I would involve the demolition of the existing building and a reconstruction, including replication of the historic cottage façade along with architecturally compatible additions, totaling 4,200 square feet of office space. The re-constructed cottage portion of the building would be erected at the existing location of the historic cottage, with additional space to the west side and rear (the additional space conforming to set back requirements). Phase II would involve the construction of a new two story office building toward the rear of the property. The initial proposal was to erect this building in a complementary, though not matching, architectural style to the re-constructed building at the front of the property. The second building would add a total of 5,820 additional square feet of office space to the property. In sum, Applicant's architect testified that the total of slightly over 10,000 square feet of office space would be less than the amount of space which could be erected in a single building on the Subject Property in conformity with all setbacks and other bulk requirements.

5. Applicant's proposal necessitates "d" variance relief for more than one principal structure on a lot. In addition, "c" variance relief was originally sought to permit three separate business uses in each of the buildings (totaling six separate business uses on the Subject Property). This exceeds the ordinance limitation of two separate business entities in a building or on a lot in the Historic Business District for non-historic buildings. Finally, assuming a determination that the replicated cottage portion of the front building did not satisfy the ordinance requirements for designation as an "historic" building, Applicant would require "c" variance relief to permit Phase I to be completed with 15 parking spaces, relative to the 16 spaces which would be required for an historic building or the 19 spaces required if the 20% surcharge for a non-historic building were utilized. In addition to the variance relief which Applicant sought, design waivers or exceptions would be required for: (a) the width of the access drive aisle (ranging between 21 and 22 feet, relative to a 24 foot requirement); (b) installation of 9 foot by 18 foot parking stalls (relative to the 10 foot by 20 foot required); (c) location of the access drive in immediate proximity to the driveway on the adjoining property to the east (relative to the ordinance requirement for a minimum of 20 feet separating adjoining driveways); (d) for the lack of an ordinance-required separate loading area; and (e) to continue to use certain existing shoebox type pole-mounted light fixtures during Phase I and until Phase II.

6. As proposed by Applicant, Phase I would consist of demolition of the existing structure on the property, reconstruction of the new front building, resulting in enlargement of the existing building at the front of the Subject Property, with minimal site improvements. Phase II would involve the construction of the second building toward the rear of the property and completion of all site improvements, on a site-wide basis.

7. Initially Applicant proposed three separate uses be permitted in each of the two office buildings, for a total of six uses on the site. Applicant understood, in any event, that due to the available parking on the site, even after completion of Phase II, there would have to be a restriction on types of office use and occupants, eliminating those with higher parking requirements under the ordinance.

8. Plans submitted by Applicant underwent substantial revisions responsive to issues raised by the Board and by the Board's Engineer. The final plans presented to the Board entitled "Preliminary & Final Site Plan, 25 East Main Street, Lot 11 in Block 1501 (Tax Map Sheet #15) Borough of Mendham, Morris County, New Jersey" (10 sheets) were prepared by David E. Fantina, P.E., dated October 15, 2010 and last revised July 18, 2011 (hereinafter the "Plans"). In addition, Applicant submitted architectural plans entitled "Proposed Addition & New Building, 25 E. Main Street, Mendham, New Jersey" (cover sheet plus 12 sheets) prepared by Appel Design Group, dated October 7, 2010 and last revised June 7, 2011 (hereinafter the "Architectural Plans"). The sheets in the Architectural Plans are identified as C1, 1.1, 2.1, 3, 4, 5, 6, 1B.1, 2B, 3B, 4B, 5B and 6B.

9. As described in testimony offered on behalf of Applicant, the Plans show buildings which, though architecturally the same as the previously proposed buildings, are reduced in size. The front building (involving the replication of the historic cottage façade) has been reduced to 3,750 square feet of office space and the rear building has been reduced to 5,400 square feet of office space. The total, as proposed in the Plans, is 9,150 square feet of office space.

10. With these modified Plans, Applicant still requires variance relief for a total of 15 parking spaces in Phase I (relative to 18 which would be required for a non-historic building, including the 20% surcharge). Applicant points out that after completion of Phase II, there will be a total of 45 parking spaces on site, enough to satisfy the ordinance parking requirement, including the 20% non-historic surcharge for the entire site and both buildings. This is achieved, however, by utilizing 9 foot by 18 foot parking stalls, as to which a design waiver or exception continues to be required.

11. The Plans depict building signage and a proposed free-standing sign in front of the front (Phase I) building. The free-standing sign is proposed to be 22.5 square feet (each side) at a maximum height of 6.67 feet. This is compliant with the ordinance. The sign will require Historic Preservation Commission review and approval. In addition, the Note on Sheet 3 of the Plans regarding potential size and location of the free-standing sign is to be deleted.

12. The Plans also depict an initial (Phase I) proposal to utilize existing shoebox type light fixtures until all light fixtures are changed, site-wide (during Phase II), to the architectural type shown on Sheet 6 of the Plans.

13. As presented, the existing building will be demolished and removed, leaving the foundation of the historic cottage. The cottage portion - especially the façade, roof lines and architectural elements - will then be replicated as shown on the Architectural Plans in modern building materials, using the existing foundation, if sound and practicable (replacing the foundation, if necessary or prudent). The additional space will be constructed as shown on the Architectural Plans, resulting in a 3,750 square foot building. This, together with seal coating the parking lot, refurbishing (but retaining) those pole-mounted shoebox type light fixtures which are to be used in Phase I, and installing initial landscaping and relevant site work, shall complete Phase I.

14. The Board expressed concern about site conditions in the event Phase II construction and improvements were delayed or cancelled. Applicant agreed that if Phase II construction were not commenced within 24 months of the issuance of a temporary or conditional Certificate of Occupancy for the Phase I building, the Phase I parking lot and all drive aisles would be milled and repaved, the shoebox lighting fixtures shall be replaced with the traditional lamps and poles shown on the Plans consistent with the needs of the Phase I building and overall site conditions, and that performance security would be furnished in this regard.

15. After discussion with the Board, Applicant also agreed that landscaping in connection with both Phase I and Phase II - or as required should Phase II be delayed - would be reviewed by the Board's Engineer and Planner, and would be subject to their reasonable satisfaction.

16. The Board and the Board's Engineer, together with the Applicant's architect and engineer, discussed a number of design and engineering issues, including those set forth in the Board Engineer's comment letter dated August 1, 2011. Applicant agreed to comply with the comments and recommendations of the Board Engineer. In this regard, concern was expressed relating to proper storm water management, the operation of the underground infiltration system, and satisfying a requirement that there be no increase in either rate or volume of run off. The Board Engineer confirmed that Applicant's calculations indicated the ability to comply with these requirements. It was also agreed that Applicant would record a document setting forth a covenant or easement for the benefit of the Borough permitting, though not obliging, the Borough to enter upon the property and maintain the system if it was not being properly maintained and to charge the owner of the property for any costs related to such activity. It was also noted that the impervious coverage upon completion of Phase II would be 64.6% on the Subject Property, relative to the maximum in the zone district of 65%. Applicant, its professionals, and subsequent owners of the Subject Property, must be alert to the minimal amount of leeway available for any additional impervious surface to be created on the property.

17. The Board also discussed with Applicant and its professionals the Borough Fire Official's evaluation of the proposed project and his suggested need for mitigation measures relative to increased fire risks. The Board, ultimately, agreed that appropriate mitigation could be achieved through Applicant's installation of monitored fire alarm systems in both buildings and the "Fire Lane" designation of all drive and access aisles.

18. Applicant also explained that the portion of the new front building (Phase I) which replicates the historic cottage façade will be constructed on the same footprint as the historic cottage. This will result in a front yard setback of 9.64 feet, relative to the 20 foot front yard setback required in the zone district. It will be replicated at the same setback, but all additional portions of the front building will conform to the standard 20 foot front setback requirement.

19. Applicant's traffic engineer explained that although the access drive ranges from only 21 to 22 feet in width (relative to the 24 foot requirement for a drive aisle), this is adequate width where there is no parking along either side of that access drive. He further explained that all parking aisles in both Phase I and Phase II construction (those behind the front building) are conforming 24 foot widths to permit adequate space for vehicle movements in and out of parking stalls. He further testified that the proposed use of this property is a low traffic generator during peak traffic hours and that there are adequate sight lines and distances and no actual conflicts with surrounding properties.

20. Applicant's traffic engineer also testified that the 9 foot by 18 foot parking stalls with 24 foot aisle widths should be more than adequate for this type of proposed office use. He further opined that high turnover of parking vehicles is not anticipated, nor is the additional space between vehicles required as a practical matter, as would be applicable to a retail setting which necessitates package or shopping cart management.

21. With respect to proximity of the access drive to the driveway on the adjoining property to the east, Applicant's traffic engineer opined that there was no issue concerning use of either of the driveways. Given the nature of the uses anticipated in the proposed buildings, the nature of the uses in the building on the adjoining property, and the history of the use of these driveways even when the Subject Property was used as a restaurant, all indications are that no difficulties or traffic problems will result.

22. Finally, Applicant's traffic engineer opined that for a general office use a large designated loading area was not really needed. Most deliveries are made to such a use by way of vans or small truck type vehicles. Generally, they can park in ordinary parking stalls and/or stand for a brief period within a drive aisle without compromising safety on or use of the property. He did recognize that trash and recycling pick ups could require larger vehicles on site and testified that these would be scheduled by Applicant to take place during off hours, avoiding conflict with ordinary business site movements and parking.

23. Based on the several matters about which he testified, Applicant's traffic engineer concluded that the site as proposed was designed with safe ingress and egress and that site circulation, vehicular safety, and pedestrian safety were all satisfactory.

24. The Board Engineer agreed that a separate large loading space is probably not necessary for an office use. He did, however, endorse the desirability of off-hours trash and recycling pick ups.

25. In connection with the modifications which were depicted in the Plans, Applicant's proposal for multiple uses on the site was reduced from three uses in each building (totaling six uses on site) to two uses in each building (totaling four uses on site). Although still requiring variance relief, this would reduce the number of business entities in each of the non-historic buildings to no more than two.

26. At the hearing on June 8, Applicant introduced and generally described the revisions which resulted in the Plans. At the final hearing, Applicant's architect confirmed that the front building would be 3,750 square feet of usable office space, with a maximum of two business entities (Phase I) and the rear building would be 5,400 square feet of useable office space, with a maximum of two business entities (Phase II). In addition to compliance with the recommendations of the Historic Preservation Commission, Applicant also agreed to use the same materials and finishes in construction of the rear building which were used in the front building.

27. Applicant's planner testified in support of the variance relief and waivers sought by Applicant. He pointed out that the Subject Property is larger than most of the lots in the Historic District, having 122 feet of frontage and being almost an acre in size. The existing structure has a 9.64 foot front setback, which is proposed to be retained by the replicated "cottage" façade. All additional building will conform to setback and bulk standards of the ordinance. By dividing the development into two buildings (front and rear), the front building (Phase I) can be executed at a smaller size than if the entire square footage were constructed in a single building. This approach was preferred by the Historic Preservation Commission as better maintaining the desired streetscape than a building twice its size, even at conforming setback, would produce. He further explained that elimination of the existing western driveway (for ingress and egress), and extension of the front building addition to the west of the "cottage", results in a visual screening of the rear building from the street (rather than a sight line alleyway directly to it). He pointed out that office uses are permitted in the Historic Business District and that all of the proposed construction is designed to complement the structures, buildings, goals and purposes of the Historic Business District.

28. Applicant's planner went on to discuss statutory criteria for the relief sought. He indicated that the central theme of the project was enhanced aesthetics and appearance, notwithstanding the building would be a reproduction in modern materials and not an actual historic structure. He explained that the second building and its economic use helps to finance the high cost of producing the replication or reproduction building. It also permits the front building to be maintained at a smaller size, more reflective of the Historic District pattern of development. Compared to the present derelict, the proposed buildings produce a functional site which will add to the strength of the Historic District. He suggested that special reasons for grant of the variance include the promotion of appropriate uses of the property, the aesthetic upgrade, and the promotion of the Historic District. He also describes the particular suitability of the site in terms of it being a large lot, being presently occupied by a derelict building with various and undesirable additions, and the plan being proposed to permit a smaller building along the streetscape. He described each of the required design waivers or exceptions, and opined that they were appropriate for a general office use. In addressing the negative criteria, he concluded that the Subject Property is a unique property in the neighborhood, that the rear building will be remote from view, that separate buildings to the rear of the property are not unusual in the Historic District, that removal of the second driveway reduces visibility of the rear building, that the present derelict building is replaced and the site rehabilitated to productive use, and that the two building arrangement is more desirable than a single, much larger building (which could be constructed in compliance with bulk standards applicable to the zone district). As a result of these positive and negative criteria, Applicant's planner opined that, with appropriate conditions, the Application could be approved without substantial detriment to the public good and without substantially impairing the intent or purpose of the zone plan or zoning ordinance.

29. There was a discussion of the proposed phasing of development, and agreement that preconstruction meetings should be held prior to the commencement of each phase. Particularly, it was important to have a preconstruction meeting prior to commencing Phase II in order to assure that appropriate safeguards would be in place during construction for use of the

front of the property, safe and adequate circulation for vehicles and pedestrians, and satisfactory arrangements for protection of the Phase I improvements, as well as the Phase II improvements under construction, including access and fire protection for each.

30. In concluding the Applicant's case, Applicant agreed that it would proceed as it has testified and in accordance with the Plans and Architectural Plans, subject to revisions required as the result of the Board Engineer's comments and discussion with the Board, subject to all conditions which have been discussed in the course of the hearings.

31. Based upon the foregoing, the Board specifically concluded that, notwithstanding its architectural design features and conceptual replication of the historic cottage, the reproduction of the exterior of the cottage portion of the front building does not result in an "historic building", as defined in the Borough's ordinances. The reproduction and its addition(s) constitute a new, non-historic building, not qualified to be considered for the benefit of the ordinance provisions relating to the structures, their occupancies, and the provisions for relaxation of the ordinance standards set forth in Section 215-18. The Board does recognize, however, that the proposed construction, design and materials of Phase I go far beyond the basic design guidelines set forth in Section 215-19(E), acknowledging that the roof lines of the building are not as might be generally envisioned by Section 215-19(E)(3), but are more in keeping with the preservation of the sense of the historic cottage (as explored by Applicant and concluded with the Historic Preservation Commission in its review of this Application).

32. After hearing testimony from Charles Topping (Borough Historian) and reviewing a photo he presented (Exhibit B-1), regarding the history of the building on site, the Board asked Applicant to return again to the Historic Preservation Commission to ask whether this additional information relating to a now-removed additional early 20th century building would alter the HPC's opinions or recommendations. Applicant pursued this with an additional presentation to the HPC, the result of which was a conclusion by the HPC that its recommendations of November 29, 2010 remained the same. The Applicant did agree, however, with Mr. Topping's suggestion that a 12 inch by 14 inch historic marker plaque be placed at the front of the replicated "cottage" façade.

33. Based upon all of the foregoing, the Board concluded that the design and proposed execution of the entire project - particularly including the front building, with its replication of the historic cottage portion of the streetscape - advances the goals of the Master Plan, and the Borough's ordinances as to non-historic buildings, in preserving and protecting the visual integrity, character and period architectural style of the Historic Business Zone, harmonizing with the planning criteria and principles for historic buildings, as well as surrounding buildings and structure. In addition to streetscape protection on East Main Street, relationships of scale, building mass and height are better achieved with the two smaller buildings than would be the case if the same square footage were to be constructed in one large (even if totally conforming) building. When completed, with all accompanying site improvements, both building will produce a viewshed consistent with the principles of the Historic Business District and the purposes of the Main Street Corridor ordinance.

34. Applicant and the Board discussed and agreed on numerous conditions to govern approval of the project, including some design and finish details, limitations on space usage, completion of Phase II site improvements if Phase II construction is delayed, large vehicle control issues, phasing issues, lighting issues, and engineering comments.

35. Based upon all of the foregoing, the Board concluded that, with appropriate conditions, it could grant the "d" variance relief requested, as well as the preliminary and final major site plan approval which Applicant seeks, together with the "c" variances and/or design waivers or exceptions required for the nonconforming or noncomplying features described above, without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

BE IT FURTHER RESOLVED that, based upon the foregoing, the Board of Adjustment of the Borough of Mendham does hereby grant and approve preliminary and final major site plan approval, together with variances as follows:

- (a) a "d" variance for two (more than the one permitted) principal structures on the Subject Property;
- (b) a "c" variance for up to two business entities in each building;
- (c) a "c" variance for front setback of the reconstructed cottage façade at the present location of the historic cottage (9.64 feet, relative to the 20 foot requirement);
- (d) a "c" variance for 15 parking spaces in conjunction with Phase I construction (relative to 18 required for a non-historic building of the size proposed); and

grant design waivers or exceptions as follows:

- (a) Access aisle width of 21 to 22 feet (relative to 24 foot requirement);
- (b) 9 foot by 18 foot parking stall size for standard stalls, exclusive of requirements applicable to HDC spaces (relative to the standard 10 foot by 20 foot stall size required);

- (c) Access drive to be located as shown on the Plans, notwithstanding its close proximity to the driveway on the adjoining property to the east (relative to ordinance-required 20 foot separation);
- (d) The lack of a designated loading area on the Subject Property;
- (e) The continued use of shoebox type pole-mounted lighting fixtures during Phase I.

The foregoing grants and approvals to allow the proposed development for office use of the Subject Property (25 East Main Street, Block 1501, Lot 11), are subject to the following conditions:

1. Construction, site improvements, and operation of the Subject Property shall be in accordance with the Application and testimony presented to the Board, as well as the Plans and Architectural Plans, all as revised to reflect the Board's findings and conclusions set forth in this Resolution, and the conditions of approval set forth herein.

2. Applicant shall comply with any and all conditions imposed in connection with Borough Sewer Connection Permit(s) for each building, which conditions are incorporated in this Resolution and made conditions of this approval.

3. Applicant's Plans shall be revised to reflect the findings and determinations of the Board as well as the comments of the Board Engineer set forth in his August 1, 2011 letter. Particularly, but not by way of limitation, Fire Lanes shall be shown on the Plans, the note on Sheet 3 of the Plans regarding potential size and location of the free-standing sign shall be deleted, and the zoning schedule set forth on the Plans shall be corrected, as discussed.

4. The Architectural Plans shall be revised in compliance with engineering comments and matters discussed regarding modifications in the course of the August 3, 2011 hearing. This shall include, but not by way of limitation, the revision to show the front building's front dormer being moved forward to permit alignment of the metal and shingle roofs, and the respecification of building materials and finishes for the rear building, utilizing the same materials and finishes as are proposed for the front building.

5. Use of the offices to be created on the Subject Property shall be limited to general and professional offices only, excluding insurance, dental and medical offices, and such use shall be in accordance with the Plans, as revised, testimony before the Board, the Board's findings of fact and conclusions of law, and conditions set forth in this Memorializing Resolution.

6. Lighting on the site shall conform to the requirements and limitations of the Borough ordinances and shall be subject to limitations on hours of operations as follows:

- (a) Site lighting shall not be illuminated until dusk and shall be extinguished no later than 9 P.M.;
- (b) Illumination of the free-standing sign shall not be commenced until dusk and shall be extinguished no later than 11 P.M.;
- (c) Architectural lighting on the buildings at entrances shall be permitted from dusk until dawn as security lighting. This lighting shall be subject to a post-installation inspection by the Board Engineer to confirm adequacy, without excessive overnight lighting.

7. The materials and finishes used on the front building (Phase I) shall be as shown in the Architectural Plans and discussed with both the Historic Preservation Commission and this Board. Notwithstanding prior plans, the same materials and finishes shall be utilized in construction of the rear building (Phase II).

8. Occupant identification signs on the buildings shall be in accordance with ordinance provisions and the free-standing sign at the front of the property shall be as depicted in the Plans, namely, a two-sided sign with 22.5 square foot faces on each side at a maximum height of 6.67 feet.

9. To the extent not previously given, Historic Preservation Commission approval must be sought and obtained with respect to all signs placed on the property, as well as the proposed lighting fixtures for installation site-wide in connection with Phase II construction.

10. Applicant shall submit a proposed deed restriction/covenant/easement for the benefit of the Borough, which shall be subject to approval as to form and content by the Borough Attorney and the Board Engineer, giving the Borough the right, though not creating an obligation, to maintain the storm water management system on the Subject Property if it is not being properly maintained by the owner, and to recover any costs incurred in this regard from the owner of the Subject Property. After approval, this shall be recorded in the Office of the Morris County Clerk and a copy of the recorded document shall be sent by Applicant to the Board of Adjustment Secretary.

11. A bronze plaque (approximately 12 inches by 14 inches) shall be installed on a pedestal in front of the front (Phase I) building identifying the location of the historic cottage and its contribution to the fabric of the Historic District. The size, materials, textual content, and location of the pedestal shall be subject to review and approval by the Historic Preservation Commission.

12. Basements of the two proposed buildings shall not be occupied as office space. They may be used for mechanicals or inactive, dry storage. In addition, space in the basement of the front (Phase I) building may be used by the business occupants of both buildings -- and is

limited in this regard -- for a Fitness Room, a Break Room with kitchen area, and a Bathroom, as shown on the Architectural Plans. Attic spaces or "third floors" may be used for mechanicals only.

13. Applicant shall comply with any applicable Affordable Housing requirements, whether municipal, state or federal, as well as applicable Scarce Resource Protection Restrictions, to the satisfaction of the Borough Attorney.

14. The metal roof portions of the front building (Phase I) shall not be executed in a bright color. They shall be dull copper or in the nature of terne metal, or otherwise compatible with the Historic District. Applicant shall review the color palette for the building exteriors, as well as roofs, with the Historic Preservation Commission and proceed with the advice and consent of the HPC.

15. The construction and site work relating to Phase I shall be concluded, and a temporary or conditional Certificate of Occupancy be made available for the front building, when the building is suitable for occupancy, the parking related to Phase I has been seal coated with materials satisfactory to the Board Engineer and restriped, the shoebox type lights to be retained have been straightened and refurbished, Phase I landscaping to the reasonable satisfaction of the Board Engineer and the Borough Planner has been installed, and the Letter of Credit performance security described in condition 16 (in form and content satisfactory to the Board Engineer and the Borough Attorney), has been furnished by Applicant.

16. Prior to issuance of the temporary or conditional Certificate of Occupancy for the front (Phase I) building, and if, when Phase I is otherwise ready for its issuance, the Phase II construction and site work have not already been commenced, Applicant shall submit to the Board Engineer, cost estimates for completion of the milling and paving and lighting improvements described in Finding #14, above. Once these estimates are approved by the Board Engineer, Applicant shall obtain and deliver to the Borough a Letter of Credit in the amount of 120% of these approved cost estimates, in form and content satisfactory to the Board Engineer and the Borough Attorney, as performance security for such work being completed if Phase II construction is not commenced within 24 months of the issuance of such Certificate of Occupancy.

17. In the event Phase II construction and site improvements are not commenced within 24 months of the issuance of the temporary or conditional certificate of occupancy for the front (Phase I) building, Applicant shall then, nevertheless, be required to mill and repave the parking area and all drive aisles and replace the shoebox type lighting as described in Finding #14, above. Applicant shall maintain the Letter of Credit performance security in effect and in good standing until completion of these site improvements, regardless of whether Phase II itself is undertaken and completed.

18. Applicant will install monitored fire alarm systems in each of the buildings to be constructed. Applicant will also designate all access and drive aisles as "Fire Lanes". The Plans shall be revised to show these Fire Lanes and shall be submitted to the Fire Official for review and approval.

19. Applicant shall comply with the Borough's tree ordinance.

20. Applicant shall make arrangements with its trash and recycling contractor(s) to make pick-ups either prior to or subsequent to regular business hours in such a manner as to avoid pick-ups during hours when business traffic and/or parking will be on site.

21. Applicant will schedule pre-construction meetings with the Borough Engineer prior to commencement of both Phase I and Phase II. In addition to all matters normally dealt with in such pre-construction meetings, particular attention will be paid to site safety during Phase II construction as well as fire and other protections and access to the construction area. Measures required and to be taken in this regard shall be as necessary to be satisfactory to the Borough Engineer.

22. Shutters to be installed on both buildings shall be on hinges and brackets.

23. Each of the buildings shall be required to undergo a satisfactory fire inspection within ninety days of occupancy.

24. Applicant shall obtain all other permits, approvals and reviews required from any board, body, or agency, whether federal, state, county or municipal, with respect to this Application or the completion of the project.

25. Applicant shall pay all taxes and municipal charges, fees and escrows which may be required in connection with this Application or the completion of the project.

26. Clearance limits are to be depicted on the final Plans, established on site, and marked and fenced to the satisfaction of the Borough Engineer prior to commencement of any clearing, site work or construction.

27. Applicant shall furnish a two year maintenance bond for all plantings.

28. The variance relief granted herein shall remain in effect through the period of protection provided by the MLUL for the Final Major Site Plan Approval also granted herein, as that may be extended in accordance with law, notwithstanding any contrary ordinance provisions regarding the useful life or time limitation on variance relief.

29. Prior to the Site Plan being signed on behalf of the Borough and/or the Board, Applicant shall comply with Conditions 2 [as to Permit(s)], 3, 4, 9, 10, 11 [as to HPC approval],

14 [as to HPC review], 24 [as to matters pertinent to the Site Plan or its elements], 25 [including any due or payable as of proffer for Plan signing], 28 [as to depiction on Plan].

BE IT FURTHER RESOLVED that this Resolution, adopted this 7th of September, 2011, memorializes the action of the Board, as set forth above, taken at its special meeting on August 3, 2011.

ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Chair Seavey adjourned the meeting at 8:07 p.m. The next regular meeting of the Board of Adjustment will be held on Tuesday, October 4, 2011.

Respectfully submitted,

Diana Callahan
Recording Secretary